

Service Date August 18, 1975

BEFORE THE UTILITY DIVISION
DEPARTMENT OF PUBLIC SERVICE REGULATION
MONTANA PUBLIC SERVICE COMMISSION

JACK SAUTTER, Complainant)	
)	
vs)	DOCKET NO. 6316
)	
CITY OF TOWNSEND, A)	ORDER NO. 4206
Municipal Corporation.)	
Respondant)	

After a prehearing conference held on March 4, 1975, and telephone conferences with parties to gain a consensus on the hearing date, a hearing concerning the complaint was set for May 27, 1975, and notice was served on May 13, 1975.

After the hearing, time for filing additional briefs was given -- none were filed, but Mr. Jerome Loendorf filed a brief before the time of trial on behalf of complainant, Jack Sautter.

FACTS ADMITTED BY PARTIES

1. When the complaint was filed Jack Sautter, Complainant, owned lots five (5) through eight (8) in block two (2) and lots nine (9) through fourteen (14) in block six (6) of the City of Townsend, Montana. Block 2 is on the east side of Cherry Street and block 6 is on the west side of Cherry Street. These lots are not served by the general Townsend City water system.

2. Respondant, City of Townsend, owns and operates the Townsend, Montana, water system which serves customers within the

City of Townsend and it has also furnished water to persons outside the City of Townsend.

3. In 1957 and 1958, the City established the water and sewer systems now in existence in Townsend. General Obligation Bonds were issued to finance these projects. The property owned by Jack Sautter has been assessed since 1957 to pay the principal and interest due on the General Obligation Bonds.

4. An extension of existing water mains a distance of one block North on Cherry Street from 4th to 5th would serve Sautter's property.

5. As a public utility, the City of Townsend is required to furnish reasonably adequate service and facilities.

FINDINGS OF FACT

1. The City of Townsend has refused to pay for an extension of water facilities to the Sautter property on Cherry Street.

2. Exhibit A, a map from the City of Townsend approved and signed by its consultant of the Wenzel firm, dated August 19, 1957, showed the proposed water system was to extend to the Sautter property and Mr. Wayne Dean, the City of Townsend witness, testified that this line extension did not have the same properties (gap) that led him to conclude the line on Exhibit B to Sautter's property was not on the original drawing.

3. Complainant and his attorney searched for other maps drawn before the bond election, but were unable to locate any.

4. No maps dated prior to the bond election were submitted by the City of Townsend to rebut Exhibit A.

5. On Exhibit B, a September, 1958, map, smudged line extending on Cherry Street North from 4th Street past the Sautter property appears to be an addition to the September, 1958, map rather than an erasure from it, since it is not in conformance with the map's draftsman's style and format and the line does not follow from the map line showing actual construction after the bond election.

6. The City of Townsend offered to create a special improvement district to extend north on Cherry Street from 4th to 5th Street, but this would put Sautter in the position of paying on a special improvement district as well as continuing to pay under the General Obligation Bond.

7. The only people cited as examples who had to pay for extension of water service were outside of the limits of the bond issue district and were not being charged under the bond issue.

8. Since the bulk of the construction pursuant to the General Obligation Bond, a) the City of Townsend constructed a water main south on Pine Street for one block and west on E Street to replace a small line serving three trailers, cabins and a service station. This line also was part of a line to give

service to Strong & Bradley. The line within the city limits was entirely paid for by the city. The line served other property besides the customers originally served by the old line; b) a line in the Regan Edition was extended on C Street for 28 feet after a cross connection was installed where a "T" connection had existed. The city paid for this construction.

EVIDENTIARY RULINGS

1. Exhibit A, the only existing map (dated August 19, 1957) of the proposed Townsend water main construction remaining from before the vote on the General Obligation Bond Issue was objected to by Mr. Berg, attorney for the City of Townsend as irrelevant and no proper foundation. The map was obtained from City Hall in Townsend by Mr. Sautter and was admitted as an official document. It was relevant to show what might have been the understanding of the people about what water mains would be constructed as a result of the General Obligation Bond Issue.

2. Mr. Sautter was asked on direct to tell what he had done to get the City of Townsend to construct the water main. Mr. Berg objected to the answer as not responsive. It was overruled but Mr. Sautter was admonished to refrain from hearsay. Sautter became responsive.

3. In explaining what he had done to get the City of Townsend to install the water main, Mr. Sautter made a reference to what an attorney who was not at the hearing said. Mr. Berg's hearsay objection was upheld.

4. Mr. Sautter was asked whether there were any sewer extensions since the bond issue and to describe them. Mr. Berg's two objections, both based on irrelevance, were overruled because the answer was relevant to indicate whether or not equal treatment had been granted here.

5. Mr. Wayne Dean, Consulting Engineer, was asked whether after looking at Exhibit I he could determine whether this was a public water system used for general distribution. Mr. Loendorf objected for Mr. Sautter on the grounds that this was not within the scope of the witness's expertise and called for a conclusion. He was overruled, the witness was qualified to answer.

6. On cross examination Mr. Ray Nydegger, Townsend Mayor, was asked if Mr. Sautter had to pay for a special improvement district to get his water main; whether Mr. Sautter would also continue to be taxed under the General Obligation Bond. Mr. Berg objected (no legal basis stated) and it was overruled.

ORDER

1. The City of Townsend shall extend the water main down Cherry Street one block to serve the property on lots five (5) through eight (8) in block two (2) and lots nine (9) through fourteen (14) in Block six (6) of the City of Townsend, Montana, and shall install all loops or other connections required by applicable health standards and officials to make this water main safe for usage. The water main extended down Cherry Street shall be at least as large as the existing main south of 4th

Street on Cherry Street unless the property owners on the east side of Cherry Street in block two and the west side of Cherry in block 6 agree otherwise.

DONE IN OPEN SESSION in Helena, Montana, on July 10, 1975, by a 3-0 vote. Monahan abstained because he was not at the hearing. Gilfeather absent.

BY ORDER OF THE PUBLIC SERVICE COMMISSION.

GORDON E. BOLLINGER, Chairman

JAMES R.SHEA, Commissioner

GEORGE TURMAN, Commissioner

ATTEST:

GAIL E. BEHAN
Secretary

(Seal)

NOTICE: You are entitled to judicial review of this Order. Judicial review may be obtained by filing a petition for review within thirty days from the service of this Order. Judicial review is pursuant to the provisions of Section 82-4216. R.C.M 1947.